

United States
Circuit Court of Appeals
For the Ninth Circuit

WALTER CHALAIRE,

Appellant,

VS.

CORNELL S. FRANKLIN,

Appellee.

Statutes and Regulations Referred
to In Brief for Appellant.

Printed Herein for the Convenience of the Court.

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No. 7753

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- A. THE ACT OF 1860, PROVIDING FOR CONSULAR COURTS
AND AUTHORIZING THE MINISTER TO MAKE REGULA-
TIONS GOVERNING PROCEDURE THEREIN.

*Act of Congress of June 22, 1860, Chap. 179, 12 Stat.
72-74:*

*Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress as-
sembled, That, to carry into full effect the provisions of
the treaties of the United States with the empires of China,
Japan, and Siam, respectively, the minister and the consuls
of the United States, duly appointed to reside in each of the*

said countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with the judicial authority herein described, which shall appertain to the said office of minister and consul, and be a part of the duties belonging thereto, wherein the same is allowed by treaty.

* * * * *

(Section 2 gives jurisdiction in criminal matters. Section 3 gives civil jurisdiction and provides for venue.)

* * * * *

Sec. 4. *And be it further enacted*, That such jurisdiction in criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, extended over all citizens of the United States in the said countries, (and over all others to the extent that the terms of the said treaties, respectively, justify or require,) so far as such laws are suitable to carry the said treaties into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law, including equity and admiralty, shall be extended in like manner over such citizens and others in the said countries; and, if defects still remain to be supplied, and neither the common law, including equity and admiralty, nor the statutes of the United States, furnish appropriate and suitable remedies, the ministers in the said countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

Sec. 5. *And be it further enacted*, That in order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the said ministers, with the advice of the several consuls in each of the said countries, respectively, or so many of them as can be conveniently assembled, shall prescribe the forms of all processes which shall be issued by any of said consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs which shall be allowed to the prevailing party, and the fees which shall be paid for judicial services to defray necessary expenses; the manner in which all officers and agents to execute process, and to carry this act into effect, shall be appointed and compensated; the form of bail-bonds, and the security which shall be required of the party who appeals from the decision of a consul; and generally, without further enumeration, to make all such decrees and regulations from time to time, under the provisions of this act, as the exigency may demand; and all such regulations, decrees and orders shall be plainly drawn up in writing, and submitted, as above provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, who shall each signify his assent or dissent in writing, with his name subscribed thereto; and after taking such advice, and considering the same, the minister, in the said countries, respectively, may, nevertheless, by causing the decree, order, or regulation to be published with his signa-

ture thereto, and the opinions of his advisers inscribed thereon, make it to become binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act.

Sec. 6. *And be it further enacted*, That all such regulations, orders, and decrees, shall as speedily as may be after publication, be transmitted by the said ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

B. THE CONSULAR COURT REGULATIONS OF 1864, PROMULGATED BY MINISTER BURLINGAME UNDER THE AUTHORITY OF THE ACT OF 1860, TOGETHER WITH THE MINISTER'S LETTER OF TRANSMITTAL TO THE SECRETARY OF STATE, THE NOTICE OF PUBLICATION BY THE CONSUL GENERAL, THE ASSENT OF THE CONSULS, AND THE SECRETARY'S ACKNOWLEDGMENT, ALL LAID BEFORE CONGRESS BY PRESIDENT JOHNSON WITH HIS ANNUAL MESSAGE, DEC. 4, 1865.

(This text is reprinted from pages 413-415, 419, 421 and 437 of Part II of *Message of the President of the United States, and accompanying documents, to the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress*, being the second part, separately paged and bound, of Volume I of *Executive Documents printed by order of the House of Representatives during the first Session of the Thirty-ninth Congress*, Washington, Government Printing Office, 1866. Ho. Ex. Doc. Vol. I, No. 1,

part 2, 39th Cong., 1st Sess., pages 413-415, 419 and 421. There is a set of these documents at the San Francisco Public Library.)

Mr. Burlingame to Mr. Seward.

No. 94.)

LEGATION OF THE UNITED STATES

Peking, November 9, 1864.

Sir: I have the honor to send two decrees made by me, and approved by the consuls, in pursuance of the act of Congress approved June 22, 1860.

The *first* was rendered necessary by the irregularities of lawless men in connection with the Chinese rebellion; the *second* by the act of Congress aforesaid.

It will be observed that the *second* decree is largely taken from forms made by the United States consul general at Constantinople, which have already been submitted by you to Congress. With our minister, the Hon. E. Joy Morris, I wish to bear witness to the ability of Mr. Godard in this respect, and to beg that the credit ascribed to these rules may be transferred to him. I wish also to express my thanks to George F. Seward, esq., consul general at Shanghai, for many valuable practical suggestions. I am chiefly indebted to him for the fee bill. He came to Peking at my request to consult in relation to these decrees.

I have carefully compared these rules with those "framed for the supreme consular court, and other consular courts, in the dominions of the Sublime Ottoman Porte, under the order of her Majesty in council of the 27th day of August, 1860, by the judge of her Majesty's supreme consular court, and approved by one of her

Majesty's principal secretaries of state;" and while I find them covering the same ground, I think those of Mr. Godard are less elaborate and more practical. Their adoption, as far as possible, in the very language of Mr. Godard, is a great advantage. They need but to be adopted in Japan to secure a uniform system throughout the east. Whatever other rules may be approved or rejected, I am sure that No. 44, which I inserted, will remain. It is this: "No consul shall recognize the claim of any American citizen arising out of a violation of the provisions of the act of Congress, approved February 17, 1862, relating to the 'coolie trade,' so called, nor any claim which involves the holding any person in slavery." I send also the circular of Mr. Seward, (marked A.) I also enclose the decrees as printed.

I have the honor to be, sir, your obedient servant,

ANSON BURLINGAME.

HON. WILLIAM H. SEWARD,

Secretary of State.

Shanghai, November 1, 1864.

I have been directed by his excellency the honorable Anson Burlingame. United States minister plenipotentiary and envoy extraordinary to China, to publish the following decrees of 22d and 23d April last. Under the provisions of the act of Congress they become of binding force and effect from this date. Certified copies of the decrees have gone forward for simultaneous publication at the several ports.

GEO. F. SEWARD, *Consul General.*

(Regulation of April 22, 1864, referred to above, provides for enrollment of American residents at consulates. The consular court regulations, dated April 23, which follow in the report, are set out in part below.)

* * * * *

Regulations for the consular courts of the United States of America in China.

In pursuance of section 5 of the act of Congress, approved June 22, 1860, entitled "An act to carry into effect certain provisions in the treaties between the United States, China, Japan, Siam, Persia, and other countries, giving certain judicial powers to ministers and consuls, or other functionaries of the United States in those countries, or for other purposes," I, Anson Burlingame, minister plenipotentiary and envoy extraordinary of the United States to the empire of China, do hereby decree the following rules and regulations for the guidance of the consular courts in China:

* * * * *

XV.—LIMITATION OF ACTIONS AND PROSECUTIONS.

82. *Criminal*.—Heinous offenses not capital must be prosecuted within six years; minor offenses within one.

83. *Civil*.—Civil actions, based on written promise, contract, or instrument, must be commenced within six years after the cause of action accrues; others within two.

84. *Absence; fraudulent concealment*.—In prosecutions for heinous offences not capital, and in civil cases involving more than \$500, any absence of respondent or defendant for more than three months at a time from China shall be added to the limitation; and in civil cases involv-

ing more than \$100, the period during which the cause of action may be fraudulently concealed by defendant shall likewise be added.

* * * * *

XVIII.—PROVISO.

106. All decrees heretofore issued by authority of the commissioners and ministers of the United States to China, which are inconsistent in whole or in part with the provisions of this decree, are hereby annulled, and those portions are henceforth void and of no effect; and the promulgation of these rules abrogates no authority hitherto lawfully exercised by consuls in China not inconsistent herewith.

ANSON BURLINGAME.

LEGATION OF THE UNITED STATES TO CHINA,

Peking, April 23, 1864.

Assented to:	GEO. F. SEWARD,
Peking, April 23, 1864.	<i>Consul General.</i>
Assented to:	OLIVER H. PERRY,
Canton, July 12, 1864.	<i>U. S. Consul.</i>
Assented to:	J. C. A. WINGATE,
Swatow, September 3, 1864.	<i>U. S. Consul.</i>
Assented to:	OLIVER B. BRADFORD,
Amoy, August 30, 1864.	<i>U. S. Vice-consul.</i>
Assented to:	A. L. CLARKE,
Foo-Chow-Foo, 1864.	<i>U. S. Vice-consul.</i>
Assented to:	EDWARD C. LORD,
Ningpo, June 20, 1864.	<i>U. S. Vice-consul.</i>
Assented to:	WM. BRECK,
Hankow, June 11, 1864.	<i>U. S. Consul.</i>

Assented to:	H. G. BRIDGES,
Kiukiang, June 13, 1864.	<i>U. S. Vice-consul.</i>
Assented to:	S. W. POMEROY, JR.,
Tientsin, April 27, 1864.	<i>U. S. Vice-consul.</i>
Assented to:	G. H. COLTON SALTER,
Chinkiang, June 2, 1864.	<i>Acting U. S. Consul.</i>
* * * *	* * *

Mr. Seward to Mr. Burlingame.

No. 121.)

DEPARTMENT OF STATE

Washington, March 27, 1865.

Sir: Your despatch of the 10th of November, 1864, and its accompaniments, relative to the regulations by which you propose to conduct the proceedings in the consular courts of China, has been received. The subject will be submitted to Congress at its next session for consideration.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

Anson Burlingame, Esq., &c., &c., &c.

C. THE PROVISIONS OF THE CONSULAR COURT ACT OF 1860
AS INCORPORATED IN THE REVISED STATUTES OF 1878.

Revised Statutes of the United States (2d ed., 1878):

Sec. 4083. To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt, and Madagascar, respectively, the minister and the consuls of the United States, duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with the judicial authority herein described, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty.

(Sections 4084 and 4085 correspond to Sections 2 and 3 of the Act of 1860, giving, respectively, criminal and civil jurisdiction.)

* * * * *

Sec. 4086. Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law

of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

Sec. 4117. In order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process, and to carry this title into effect, shall be appointed and compensated; the form of bail bonds, and the security which shall be required of the party who appeals from the decision of a consul; and shall make all such further decrees and regulations from time to time, under the provisions of this chapter, as the exigency may demand.

Sec. 4118. All such regulations, decrees, and orders shall be plainly drawn up in writing, and submitted, as hereinbefore provided, for the advice of the consuls, or

as many of them as can be consulted without prejudicial delay or inconvenience, and such consul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act.

Sec. 4119. All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

D. THE ACT OF 1906 CREATING THE UNITED STATES COURT FOR CHINA AND PROVIDING THAT ITS PROCEDURE SHALL BE IN ACCORDANCE WITH THAT PREVIOUSLY PRESCRIBED FOR THE CONSULAR COURTS.

Act of Congress of June 30, 1906, Chap. 3934, 34 Stat. 814:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That a court is hereby established, to be called the United States court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by section two of this Act.

* * * * *

Sec. 2. The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed five hundred dollars United States money and in criminal cases where the punishment for the offense charged can not exceed by law one hundred dollars fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States court for China.

* * * * *

Sec. 3. That appeals shall lie from all final judgments or decrees of said court to the United States circuit court of appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken.

Sec. 4. The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States court, shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its deci-

sions and shall govern the same subject to the terms of any treaties between the United States and China.

Sec. 5. That the procedure of the said court shall be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: *Provided, however,* That the judge of the said United States court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections forty-one hundred and six and forty-one hundred and seven of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court.

E. THE UNITED STATES CODE OF 1926, RE-ENACTING PROVISIONS OF THE ACTS OF 1860 AND 1906.

The Code of the Laws of the United States of America, in force Dec. 7, 1925, adopted June 30, 1926, Chap. 712.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifty titles hereinafter set forth are intended to embrace the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925, compiled into a single volume under the authority of Congress, and designated "The Code of the Laws of the United States of America."

Sec. 2. In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each state, Territory, or insular possession of the United States—

(a) The matter set forth in the Code, evidenced as hereinafter in this section provided, shall establish prima facie the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925; but nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

TITLE 22.—FOREIGN RELATIONS AND INTERCOURSE.

CHAPTER 2.—CONSULAR COURTS.

(Reference is made to Sections 141, 142, 143, 145, 146, 147 and 148 of this Chapter. These sections are not reprinted here because their provisions are in all material respects identical with those of the Act of June 22, 1860 and of the Revised Statutes of 1878, which have been quoted above.)

CHAPTER 3.—UNITED STATES COURT FOR CHINA.

(Reference is made to Sections 191 to 196 of this Chapter. They contain provisions substantially identical with those of sections 1-5 of the Act of June 30, 1906, quoted above. The only code section which throws any additional light on the questions involved in this case is Section 196, which corresponds with Section 5 of the statute, and is quoted below.)

196. *Procedure generally; exclusion of associate aids.*—The procedure of the United States court for China shall be in accordance, so far as practicable, with the procedure prescribed for consular courts in China in accordance with chapter 2 of this title: *Provided, however,* That the judge of the said United States court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections 152 and 153 of chapter 2 of this title allowing consuls in certain cases to summon associates shall have no application to said court.

F. ACT OF 1900, PROVIDING CIVIL GOVERNMENT FOR
ALASKA.

*Act of Congress of June 6, 1900, Chap. 786, 31 Stat. 321, 334, entitled, "An Act Making further provision for a civil government for Alaska. * * *":*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.

Chapter One.

Sec. 1. That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. * * *

TITLE II.

* * * * *

Chapter Two.

* * * * *

Sec. 3. Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued. * * *

Sec. 4. The periods prescribed in section three of this Act for the commencement of actions shall be as follows:
* * *

Sec. 5. Within ten years—

First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

Second. An action upon a sealed instrument.

Sec. 6. Within six years—

First. An action upon a contract or liability, express or implied, excepting those mentioned in section five;
* * *

(Sees. 835-838 of Compiled Laws of the Territory of Alaska, 1913, pages 379-381, are in substance identical with the above provisions, of which they are a codification.)

G. DISTRICT OF COLUMBIA CODE.

Act of Congress of Mar. 3, 1901, Chap. 854, 31 Stat. 1189, 1389, entitled, "An Act To establish a code of law for the District of Columbia."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following is hereby enacted and declared to be a code of law for the District of Columbia, to go into effect and operation from and after the first day of January, in the year of our Lord nineteen hundred and two.

* * * * *

CHAPTER FORTY-ONE.

Limitation of Actions.

Sec. 1265. Periods of Limitations—No action shall be brought for the recovery of lands, tenements, or hereditaments after fifteen years from the time the right to maintain such action shall have accrued; nor on any executor's or administrator's bond after five years from the time of the right of action accrued thereon; nor on any other bond or single bill, covenant or other instrument under seal after twelve years after the accruing of the cause of action thereon; nor upon any simple contract, express or implied, or for the recovery of damages for any injury to real or personal property, or for the recovery of personal property or damages for its unlawful detention after three years from the time when the right to maintain any such action shall have accrued; * * *.

(The provisions of Sec. 1265, above quoted, have been incorporated without change in the District of Columbia Code of 1930, Title 24, Sec. 341.)

* * * * *

